IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.52 of 2007

Smt. Lata Dinanath Mangeshkar ..Petitioner

Versus

The State of Maharashtra & Anr....Respondents

Mr. Amit B. Borkar, for the petitioner.
Mrs. M.P. Thakur, AGP for Respondent Nos. 1 and 2.

CORAM : F.I. REBELLO &
S.J.VAZIFDAR, JJ.
DATED : 13TH FEBRUARY 2007

P.C.

. Rule. Heard forthwith.

2. The petitioner has approached this Court contending that she has not been allowed to retain the land to the extent of 2000 sq. meters in terms of Section 4(1)(d) of the Urban Land (Ceiling & Regulation) Act, 1976, hereinafter referred to as the Act.

. A few relevant facts may be set out. The total land holding of the petitioner is 38,623.23 sq. meters. According to the petitioner the land built up is 3997.50 sq. meters and the land appurtenant thereto is 2793.50 sq. meters. Thus the total area of non-vacant land is 6771 sq.meters. It is, therefore, submitted that after this land is deducted from the total land of the petitioner, the petitioner would be entitled under Section 4(1)(d) to 2000 sq. meters from the vacant land.

3. By an order dated 21st July, 2006 the Competent Officer has held that the area of 23,889.17 sq. meters is

declared as surplus taking into consideration, an area of 7963.03 sq. meters which was held to be unsuitable for construction and deducted from the vacant area as per Section 2(q) of the Act.

4. On behalf of the respondent State, it is contented that the judgment of the Supreme Court in Meera Gupta (Smt.) vs. The State of West Bengal & Ors., (1992) 2 SCC 494, was communicated by the Central Government to the State Government in respect of land which could be retained by the land holder. The State Government by Circular dated 10th August,1994 issued a G.R. that the judgment be given prospective effect from the date of Government of India letter dated 13th November, 1992. In the instant case the order was issued on 13th February, 1990 and it is on account of that, the Competent Authority has chosen not to allow the petitioner to retain 2000 sq.meters of land.

5. We have perused the judgment of the Supreme Court in Meera Gupta (supra). The judgment is clear that the land appurtenant as set out in sub-clauses (ii) and (iii) of Clause (q) of Section 2 will have to be excluded. The Supreme Court has not made the judgment prospective. Once that be so, the Judgement would have to be read to mean that the Supreme Court has declared the law as it stands and that would be the date of enactment of the law. In that context the order by the Competent Officer would be illegal and the petitioner would be entitled to the benefit of Section 4(1)(d), namely an area admeasuring 2000 sq.meters.

6. To that extent the impugned order dated 21st July, 2006 is quashed and set aside. The petitioner is held to be entitled to retain 2000 sq. meters. The matter is remanded back to the Competent Officer to work out the surplus area after deducting the aforesaid 2000 sq. meters. The entire exercise to be completed within six weeks from today.

. Rule made absolute accordingly. There shall be no order as to costs.

(**F.I. REBELLO**, J)

(**S.J.VAZIFDAR, J)**